

**United States District Court
Western District of Oklahoma**

Proposed Changes to Local Civil Rules

The Local Rules Committee of the Western District of Oklahoma has proposed the following changes to the Court's Local Civil Rules. Pursuant to Fed. R. Civ. P. 83(a)(1), the public is hereby given notice of these proposed amendments and is invited to comment on the proposed rules. All comments must be directed to comments@okwd.uscourts.gov and should be received no later than March 29, 2016.

LCvR16.1 (*Modification*)

LCvR16.1 Pretrial Procedures.

(a) Parties' Initial Conference and Preparation for Status and Scheduling Conference.

(1) **Parties' Initial Conference.** In cases not exempt under subparagraph (b)(1) of this rule, counsel with authority to make appropriate decisions and any unrepresented parties shall confer, including as required by Fed. R. Civ. P. 26(f)(1), to discuss the issues set forth in: (A) Fed. R. Civ. P. 26(f)(2) and (3); (B) the form Joint Status Report and Discovery Plan provided as Appendix II to these rules; and (C) the form Scheduling Order provided as Appendix III to these rules or, alternatively, any specialized scheduling order to be requested by the parties. Prior to this conference, counsel for any represented party shall discuss settlement and alternative dispute resolution procedures with his or her client.

(2) **Preparation and Submission of Joint Status Report and Discovery Plan.** It shall be the duty of the plaintiff to arrange the preparation and filing of a Joint Status Report and Discovery Plan, following the form provided as Appendix II, and the duty of all other parties to jointly participate in the preparation of that document and ensure its filing. Unless otherwise ordered by the court, the parties shall prepare, sign jointly, and file as a single document their Joint Status Report and Discovery Plan with the clerk of the court not later than seven days prior to the status and scheduling conference.

(3) **Relief from Certain Requirements.** The court may order on its own motion, or at a party's request, relief from the timing requirements in Fed. R. Civ. P. 26(f)(1), (2) and/or LCvR 16.1(a)(2), if there is good cause for that relief.

(b) Status and Scheduling Conference and Scheduling Order.

(1) **Exempted Actions.** Unless specifically directed by the court, the requirements in Fed. R. Civ. P. 16(b) shall not apply in the following categories of cases: those cases exempted from initial disclosures under Fed. R. Civ. P. 26(a)(1)(B), social security appeals, bankruptcy appeals, and actions commenced by the United States for forfeiture and/or debt collection.

(2) **Timing.** In cases not exempt under subparagraph (b)(1) of this rule, and at the discretion of the assigned judge, upon the filing of an appearance by a defendant or notice that

a defendant has been served, the case will be placed on a regular monthly docket for the administration of a status and scheduling conference. Unless otherwise ordered, the conference will be held on a date that will allow the issuance of a scheduling order in accordance with the time limits of Fed. R. Civ. P. 16(b)(2).

(3) **Delay.** The court may order on its own motion, or at a party's request, delay of the status and scheduling conference and the scheduling order if there is good cause for the delay. Circumstances that may constitute good cause include but are not limited to: the existence of an unserved defendant in a multi-defendant case, a pending motion to join a party, and a pending motion under Fed. R. Civ. P. 12(b) that if granted would significantly alter the scope and duration of discovery and/or pretrial litigation in the case.

(4) **Required Attendance.** Counsel with authority to make appropriate decisions and any unrepresented parties shall attend any status and scheduling conference required by the court. When justified by the circumstances, the court may allow counsel or a party to participate in such conference by telephone. Counsel and any unrepresented parties shall be prepared to discuss all relevant matters enumerated in Fed. R. Civ. P. 16(b)(3) and (c)(2), as well as the parties' Joint Status Report and Discovery Plan.

(c) **Final Pretrial Report.**

(1) **Preparation and Submission of Final Pretrial Report.** It shall be the duty of the plaintiff to arrange the preparation and filing of a Final Pretrial Report, following the form provided as Appendix IV to these rules, and the duty of all other parties to jointly participate in the preparation of that document and ensure its filing. Unless otherwise ordered by the court, the parties shall prepare, sign jointly, and file as a single document their Final Pretrial Report with the clerk of court on or before the first day of the month that the case is scheduled for trial. Further, the parties shall submit, in accordance with the court's ECF procedures, a proposed order approving the Final Pretrial Report.

(2) **Approval.** When approved by the assigned judge, the Final Pretrial Report shall constitute an order of the court as to all matters contained therein.

(d) **Authorization of Alternative Dispute Resolution.** The court authorizes alternative dispute resolution methods, including mediation, judicial settlement conferences, and summary jury trials.

COMMITTEE NOTE: This proposed rule updates and reorganizes the current version of LCvR 16.1 and adds guidance on timing issues stemming from the 2015 amendments to the Federal Rules of Civil Procedure. As a result of the substantial reorganization of the rule, a red-line reference is not provided, but following is a summary of the substantive changes and additions:

- (a)(1) clarifies that at the parties' initial conference they must discuss the issues itemized in Fed. R. Civ. P. 26(f), the form Joint Status Report and Discovery Plan, and the form Scheduling Order.
- (a)(3) clarifies the availability of relief from the requirements in (a)(1) and (a)(2) and states that such relief requires good cause.
- (b)(1) expands the list of categories of cases exempted from the rule under Fed. R. Civ. P. 16(b)(1), adding certain actions that traditionally have had no status conference in this Court.

- (b)(2) establishes that, subject to discretion of the assigned judge, the trigger for the court to schedule a status and scheduling conference will be the filing of an appearance by a defendant or a notice that a defendant has been served. These are also the triggers in Fed. R. Civ. P. 16(b)(2) for the issuance of a scheduling order.
- (b)(3) provides examples of good cause under Fed. R. Civ. P. 16(b)(2) for delay of a scheduling order (and any associated status and scheduling conference). It is intended that exceptions under (b)(3) be rare and that the provision, while providing discretion to the court, not be used to circumvent the spirit of the 2015 amendments to the Federal Rules of Civil Procedure. The committee believes that specifying these examples will point litigants to the type of narrow circumstances that may present legitimate scheduling difficulties and warrant the delay allowed under the federal rule, while also limiting enlargement of the exception.
- (b)(4) updates references to the matters the parties should be prepared to discuss at the status and scheduling conference.
- (c) provides the same substantive guidance for the submission of final pretrial reports as is in the current version of LCvR 16.1(b); however, certain extraneous material was omitted and the requirement for filing a proposed order was updated to reflect current practice.

LcvR 45.1 (*Modification*)

LCvR 45.1 Subpoenas to Nonparties to Produce Documents

(a) **Seven Days Advance Notice to Other Parties.** The notice required by Fed. R. Civ. P. 45(a)(4), with the attached subpoena, shall be filed at least 7 days before the subpoena is served on the person to whom it is directed.

(b) **Motion for Protective Order.** Within 7 days from the filing of the notice provided in LCvR 45.1(a), any party may file a motion to preclude service of the subpoena, in whole or in part, on any ground for which a protective order may be sought. If a motion under this rule is timely filed, the subpoena shall not be served on the person to whom it is directed until the motion is determined.

(c) **Other Remedies Unaffected.** Failure to file a motion under LCvR 45.1(b) does not preclude any party or person from invoking other remedies, such as a subsequent motion for protective order or a motion to quash or to modify the subpoena under Fed. R. Civ. P. 45(d).

COMMITTEE NOTE: The Committee recommends that LCvR 45.1 be modified as detailed above. This local rule was adopted in December 2015. The modifications clarify the rule's descriptions of the subpoena at issue and the document to be served on other parties.

LcvR. 81.4 Bankruptcy Cases (*Modification*)

LCvR 81.4 Bankruptcy Cases

(b) Motions to Abstain or for Withdrawal of the Reference.

(1) Motions to abstain from hearing a particular proceeding pursuant to 28 U.S.C. § 1334(c) shall be first presented to and heard by the bankruptcy judge and shall be governed by ~~Fed.~~ **Federal Rule of Bankruptcy Procedure** 5011 and 9014.

(2) Motions for withdrawal of the reference of a **bankruptcy** case ~~or, adversary proceeding, or contested matter (collectively, a “Bankruptcy Proceeding”)~~ shall be filed with the ~~bankruptcy~~ clerk of the bankruptcy court, along with the required filing fee, and shall be governed by **Federal Rule of Bankruptcy Procedure** 5011 and 9014. The motion shall address the authority of the bankruptcy court to adjudicate the claims asserted in the Bankruptcy Proceeding, including: (i) whether the Bankruptcy Proceeding is a core proceeding under 28 U.S.C. § 157(b) or a proceeding that is otherwise related to a case under Title 11, and (ii) whether the bankruptcy court has the constitutional authority to enter a final order and judgment on the claims asserted in the Bankruptcy Proceeding.

(3) To be timely under 28 U.S.C. § 157(d), motions for withdrawal of the reference of a bankruptcy case shall be filed and served ~~within 21~~ **14** days after ~~service of summons in a proceeding or~~ the first meeting of creditors is concluded in the case, and motions for withdrawal of the reference of an adversary proceeding or a contested matter shall be filed and served within 30 days of the time the movant files its first pleading. Failure to timely move for withdrawal of the reference of a Bankruptcy Proceeding shall constitute waiver of any right to trial by jury of the claims asserted in the Bankruptcy Proceeding and, in light of the opportunity to refuse occasioned by § 157 and this rule, a knowing and voluntary consent to the adjudication of those claims in the bankruptcy court.

(4) Responses to motions for withdrawal shall be filed with the bankruptcy clerk within 14 days from filing of the motion. Replies shall be filed within 7 days of the filing of any ~~objection in a case which renders a matter contested~~ **response**.

~~(35)~~ Upon receipt of any motion for withdrawal ~~and associated responses of the reference of a Bankruptcy Proceeding and any response thereto~~, the bankruptcy judge, within a time period reasonable under the circumstances of the matter, shall issue a written recommendation on the motion **to the District Court**.

COMMITTEE NOTE: The committee recommends the revision of subparagraph (b) of LCvR 81.4 to address the holding of the United States Supreme Court in *Stern v. Marshall*, 564 U.S. 2 (2011), that the finding of a “core” proceeding is not the sole criterion for determining whether the bankruptcy court has jurisdiction to adjudicate claims. Current LCvR 81.4(b)(3) provides that a motion to withdraw the reference of a bankruptcy proceeding “is to be filed with the bankruptcy clerk within 21 days after service of a summons in a proceeding or filing of an objection in any case which renders a matter contested.” In the case of an adversary proceeding, this rule allows the incongruous result that a motion to withdraw the reference may be required to be filed before the time within which an adversary defendant is required to file an answer to the complaint. Further, the current rule may cause the deadline for moving to withdraw the reference to precede the deadline for a defendant to demand a jury trial under Fed. R. Civ. P. 38 and Fed. R. Bankr. P. 9015.

Title 28, Section 157(d) of the United States Code allows a district court to “withdraw . . . any proceeding referred to under this section . . . on timely motion of any party, for cause shown.” Neither the statute nor any federal rule defines “timely” for this purpose. Taking into account Rule 38(b)—which is incorporated into the bankruptcy rules by Fed. R. Bankr. 9015 and requires that for “any issue triable of right by a jury,” demand must be made “no later than 14 days after the last pleading directed to the issue is served”—the proposed rule establishes a deadline for filing a motion to withdraw the reference of a bankruptcy case as 14 days after the first meeting of creditors is concluded. For adversary proceedings or contested matters, the proposed rule places that deadline at 30 days after the movant files its first pleading in that proceeding or matter.

The proposed rule also provides notice to the parties regarding the consequences of failing to move for withdrawal of the reference. First, the rule states that such failure constitutes waiver of the right to trial by jury. Second, the rule states that the failure may be construed as a knowing and voluntary consent to adjudication of the claims by the bankruptcy court. This latter language tracks the standard discussed in *Wellness Int’l Network, Ltd. v. Sharif*, 575 U.S. ____ (2015), for a court to find implied consent to adjudication by an Article I judge.